

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CATHERINE A. ORCUTT,

Case No. 2:15-02474-JCM-PAL

Plaintiff,

SCREENING ORDER

v.

(IFP App – Dkt. #1)

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Plaintiff Catherine A. Orcutt has submitted an Application to Proceed *In Forma Pauperis* (Dkt. #1) pursuant to 28 U.S.C. § 1915 along with a Complaint (Dkt. #1-2). This matter is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 and 1-9 of the Local Rules of Practice.

I. IN FORMA PAUPERIS APPLICATION

Ms. Orcutt’s Application includes the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted. The Court will now review the Complaint.

II. SCREENING THE COMPLAINT

After granting a request to proceed *in forma pauperis*, a federal court must additionally screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) “applies to all *in forma pauperis* complaints”). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil Procedure applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). For purposes of 28 U.S.C. § 1915’s screening requirement, a properly pled complaint must therefore provide “a short and plain statement of the claim

1 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic*
2 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
3 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
4 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A
5 complaint “must contain sufficient allegations of underlying facts to give fair notice and to
6 enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
7 Cir. 2011).

8 Federal courts are given the authority dismiss a case if the action is legally “frivolous or
9 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
10 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The standard for
11 determining whether a plaintiff has failed to state a claim upon which relief can be granted under
12 § 1915 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a
13 claim. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is
14 essentially a ruling on a question of law. *North Star Intern. v. Ariz. Corp. Comm’n*, 720 F.2d
15 578, 580 (9th Cir. 1983). In considering whether a plaintiff states a valid claim, the court accepts
16 as true all material allegations in the complaint and construes them in the light most favorable to
17 the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court dismisses
18 a complaint pursuant to § 1915(e), a plaintiff is ordinarily given leave to amend with directions
19 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
20 could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

21 Here, Ms. Orcutt’s Complaint challenges a decision by the Social Security
22 Administration (“SSA”) denying her disability insurance benefits under the Social Security Act.
23 *See* Compl. (Dkt. #1-2) ¶ 1. To state a valid benefits claim, a complaint must give the defendant
24 fair notice of what the plaintiff’s claim is and the grounds upon which it rests. *Starr*, 652 F.3d at
25 1216. Although this showing need not be made in great detail, it must be presented in sufficient
26 detail for the court to understand the disputed issues so that it can meaningfully screen the
27 complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2015).

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2 **A. Exhaustion of Administrative Remedies**

3 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative
 4 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
 5 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
 6 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
 7 claim”). Generally, if the SSA denies a claimant’s application for disability benefits, she can
 8 request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant
 9 may request a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the
 10 claim, a claimant may request review of the decision by the Appeals Council. If the Appeals
 11 Council declines to review the ALJ’s decision, a claimant may then request review by the United
 12 States District Court. *See* 20 C.F.R. §§ 404, 416.

13 In this case, Ms. Orcutt alleges that on October 23, 2015, the Appeals Council denied her
 14 request for review, and the ALJ’s decision became the final decision of the Commissioner. *See*
 15 Compl. ¶ 2. Thus, it appears she has exhausted her administrative remedies. Once a plaintiff has
 16 exhausted her administrative remedies, she can obtain review of an SSA decision denying
 17 benefits by commencing a civil action within 60 days after notice of a final decision. *See* 20
 18 C.F.R. §§ 404, 416.¹ An action for judicial review of a determination by the SSA must be
 19 brought in a District Court of the United States for the judicial district in which a plaintiff
 20 resides. *Id.* Here, Ms. Orcutt timely commenced this action as the Complaint was filed on
 21 December 24, 2015, and the Complaint indicates that she resides within the District of Nevada.
 22 *See* Compl. ¶ 1. Accordingly, she has satisfied these prerequisites for judicial review.

23 **B. Grounds for Ms. Orcutt’s Appeal and the Nature of the Disability**

24 Ms. Orcutt’s Complaint seeks judicial review of the Commissioner’s decision denying
 25 benefits and asks the Court to reverse that decision, or alternatively, to remand this matter for a
 26 new hearing. A district court can affirm, modify, reverse, or remand a decision if a plaintiff has
 27 exhausted his administrative remedies and timely filed a civil action. However, judicial review

28 ¹ The SSA allows 5 days for mailing. *See, e.g.*, SSA Letter of Final Decision (Dkt. #1-2).

1 of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is
 2 substantial evidence in the record as a whole to support the findings of the Commissioner; and
 3 (b) whether the correct legal standards were applied. *Morgan v. Comm'r Soc. Sec. Admin.*, 169
 4 F.3d 595, 599 (9th Cir. 1999).

5 In her Complaint, Ms. Orcutt contends that she "is disabled as a result of her medically
 6 severe impairments of degenerative disc disease of the thoracic spine, and moderate degenerative
 7 changes of the cervical spine." *See* Compl. ¶ 7. She alleges she became disabled on April 5,
 8 2007. *Id.* Ms. Orcutt asserts that the SSA's conclusions and findings of fact "are not supported
 9 by substantial evidence and are contrary to law and regulation." *Id.* ¶ 8. Specifically, Ms. Orcutt
 10 disagrees with the SSA's decision as it "failed to comply with the opinion evidence in this case,
 11 evaluating credibility, and supporting the finding" that she is not disabled. *Id.* The Complaint
 12 contains sufficient allegations of underlying facts to give the Defendant fair notice of Ms.
 13 Orcutt's disagreement with the SSA's final determination. The Court therefore finds that her
 14 Complaint states a claim for initial screening purposes under 28 U.S.C. § 1915.

15 Accordingly,


16 **IT IS ORDERED:**

- 17 1. Plaintiff Catherine A. Orcutt's Application to Proceed *In Forma Pauperis* (Dkt. #1) is
 18 **GRANTED**. She shall not be required to pay the filing fee of four hundred dollars
 19 (\$400.00).
- 20 2. Ms. Orcutt is permitted to maintain this action to conclusion without the necessity of
 21 prepayment of any additional fees or costs or the giving of a security therefor. This
 22 Order granting leave to proceed in forma pauperis shall not extend to the issuance
 23 and/or service of subpoenas at government expense.
- 24 3. The Clerk of Court shall file the Complaint and issue summons to the United States
 25 Attorney for the District of Nevada and deliver a copy of the summons and Complaint
 26 to the U.S. Marshal for service.
- 27 4. Ms. Orcutt shall serve the Commissioner of the Social Security Administration by
 28 sending a copy of the summons and Amended Complaint by certified mail to: (1)

1 Office of Regional Chief Counsel, Region IX, Social Security Administration, 160
2 Spear St., Suite 899, San Francisco, California 94105-1545; and (2) the Attorney
3 General of the United States, Department of Justice, 950 Pennsylvania Avenue, N.W.,
4 Room 4400, Washington, D.C. 20530.

- 5 5. Following the filing of an answer, the Court will issue a scheduling order setting a
6 briefing schedule.
- 7 6. From this point forward, Ms. Orcutt shall serve upon Defendant or, if appearance has
8 been entered by counsel, upon the attorney, a copy of every pleading, motion or other
9 document submitted for the court's consideration. Ms. Orcutt shall include with the
10 original paper submitted for filing a certificate stating the date that a true and correct
11 copy of the document was personally served or sent by mail to the Defendant or
12 counsel for the Defendant. The Court may disregard any paper received by a district
13 judge or magistrate judge which has not been filed with the Clerk of the Court, and
14 any paper received by a district judge, magistrate judge or the Clerk that fails to
15 include a certificate of service.

16 Dated this 4th day of February, 2016.

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18 PEGGY A. LEEN
19 UNITED STATES MAGISTRATE JUDGE
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